



Reprinted
February 11, 2005

SENATE BILL No. 564

DIGEST OF SB 564 (Updated February 10, 2005 2:52 pm - DI 107)

Citations Affected: IC 32-29; IC 32-30.

Synopsis: Mortgage foreclosure sales. Allows a petitioner in a mortgage foreclosure sale to request an auctioneer who must be approved by the court. Requires the auctioneer to schedule the auction.

Effective: July 1, 2005.

Clark, Kruse, Broden

January 20, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.
February 3, 2005, amended, reported favorably — Do Pass.
February 10, 2005, read second time, amended, ordered engrossed.

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SB 564—LS 7897/DI 103+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 564

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-29-7-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A sheriff shall
3 offer to sell and sell property on foreclosure in a manner that is
4 reasonably likely to bring the highest net proceeds from the sale after
5 deducting the expenses of the offer and sale.
6 (b) Upon prior petition of the debtor or any creditor involved in the
7 foreclosure proceedings, the court in its order of foreclosure shall order
8 the property sold by the sheriff through the services of an auctioneer
9 **requested by the petitioner and approved by the court** if:
10 (1) the court determines that a sale is economically feasible; or
11 (2) all the creditors in the proceedings agree to both that method
12 of sale and the compensation to be paid the auctioneer.
13 (c) ~~At~~ **The sheriff shall engage the auctioneer engaged by a sheriff**
14 ~~under this section not later than fourteen (14) calendar days after~~
15 **the date of the order entered by the court under subsection (b). The**
16 **auctioneer shall schedule the auction and** conduct the auctioneer's
17 activities as appropriate to bring the highest bid for the property on



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foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale.

SECTION 2. IC 32-30-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) A sheriff shall sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or a creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of ~~an~~ **the auctioneer requested by the petitioner and approved by the court** if:

- (1) the court determines that a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) ~~The sheriff shall engage an the auctioneer engaged by a sheriff under this section not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and~~ conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due to the auctioneer on account of the auctioneer's expenses and fee, if any, must be paid as a cost of the sale from the proceeds before the payment of any other payment.

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SENATE MOTION

Madam President: I move that Senator Kruse be added as second author and Senator Broden be added as coauthor of Senate Bill 564.

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COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 564, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, strike "an" and insert "**the**".

Page 1, line 13, delete "Upon entry of an order under subsection (b), the" and insert "**The**".

Page 1, line 14, strike "an" and insert "**the**".

Page 1, line 14, delete "." and insert "**not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b).**".

and when so amended that said bill do pass.

(Reference is to SB 564 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 564 be amended to read as follows:

Page 1, line 9, after "petitioner" insert **"and approved by the court"**.

Page 1, line 13, delete "not later than".

Page 1, delete line 14.

Page 1, line 15, delete "the court under subsection (b).".

Page 1, line 15, after "section" insert **"not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b)."**.

(Reference is to SB 564 as printed February 4, 2005.)

CLARK

 SENATE MOTION

Madam President: I move that Senate Bill 564 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 2. IC 32-29-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A sheriff shall offer to sell and sell property on foreclosure in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer and sale.

(b) Upon prior petition of the debtor or any creditor involved in the foreclosure proceedings, the court in its order of foreclosure shall order the property sold by the sheriff through the services of an auctioneer **requested by the petitioner and approved by the court** if:

- (1) the court determines that a sale is economically feasible; or
- (2) all the creditors in the proceedings agree to both that method of sale and the compensation to be paid the auctioneer.

(c) ~~An~~ **The sheriff shall engage the auctioneer engaged by a sheriff under this section not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b). The auctioneer shall schedule the auction and** conduct the auctioneer's activities as appropriate to bring the highest bid for the property on foreclosure. The advertising conducted by the auctioneer is in addition to any other notice required by law.

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(d) The auctioneer's fee must be a reasonable amount stated in the court's order. However, if the sale by use of an auctioneer has not been agreed to by the creditors in the proceedings and the sale price is less than the amount of the judgment and the costs and expenses necessary to the satisfaction of the judgment, the auctioneer is entitled only to the auctioneer's advertising expenses plus one hundred dollars (\$100). The amount due the auctioneer on account of the auctioneer's expenses and fee, if any, shall be paid as a cost of the sale from its proceeds before the payment of any other payment from the sale."

Page 1, line 13, delete "not later than".

Page 1, delete line 14.

Page 1, line 15, delete "the court under subsection (b).".

Page 1, line 15, after "section" insert "**not later than fourteen (14) calendar days after the date of the order entered by the court under subsection (b).**".

Renumber all SECTIONS consecutively.

(Reference is to SB 564 as printed February 4, 2005.)

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